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# CEA Information Note

*Canadian Education Association / Association canadienne d'éducation*


# Sentenced to School:

## The Young Offenders Act and Canadian School Boards

**May 1990**

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## A BIT OF BACKGROUND

The *Young Offenders Act* was drafted by the federal government as a new method of dealing with people aged 12-17 inclusive who violate federal criminal law in Canada. It received Royal Assent in 1982, and took effect in stages between 1983 and 1985.

Under the old *Juvenile Delinquents Act*, which had been in force without any major revision since 1908, emphasis was placed on the treatment of delinquents, who were considered to be children in need of care and assistance, rather than criminals. The attitude of the courts can best be described as a benign paternalism, that is, the juvenile delinquent was seen as a misdirected and misguided child in need of assistance, guidance and proper supervision. This attitude, however, often resulted in the child being denied some of the basic rights accorded to adults under the justice system. Juvenile court proceedings were private and confidential, so monitoring of the rights of the individuals was impossible. It was felt that young people sometimes received harsher treatment than an adult would in comparable situations. Juveniles often were handed indefinite terms in a treatment facility, whereas an adult would serve a definite term in detention and then be totally released.

In the period following the Second World War, many began to question the belief that this rather open-ended treatment was a valid method of rehabilitation. Attention began to turn back to the idea of a period of detention as punishment for the crime. In addition, the legal community began to put forth the opinion that juveniles were being forced to surrender too many of the basic rights of all adults in exchange for unclear terms and methods of treatment.

Starting in 1961, the federal Department of Justice undertook a review of the existing legislation and, after several attempts at revision failed, drafted the *Young Offenders Act*. The new YOA reinforces the rights that young people have under the justice system and the Canadian *Charter of Rights and Freedoms*, that is, the same rights that adults have, specifically the rights to physical security, to protection from arbitrary actions and to participate in decisions that affect them. At the same time, the YOA maintains some "special guarantees" for young people, on the assumption that they are still in need of guidance and assistance.

The new YOA sets out four major guiding principles:

- young persons should be held responsible for their actions, although they, because of their immaturity, should not be held as accountable as adults.
- society has a fundamental right to protection from the criminal behaviour of young people.
- "young persons who commit offences require supervision, discipline and control, but, because of their state of dependency and level of development and maturity, they also have special needs and require guidance and assistance."
- young persons have the same rights and freedoms as adults, including a "right to the least possible interference with freedom that is consistent with the protection of society."

The YOA provides for a wide range of dispositions ("sentences") available to the youth court, including:

- absolute discharge
- fine
- restitution (making good any loss or damage)
- committal for treatment, in a hospital or other place (only with the consent of the young offender, the parents and the treatment facility)
- open custody (such as a group home)
- secure custody (such as a correctional centre or prison)

- compensation
- community service
- probation (with various possible conditions attached, such as attendance at school or a curfew)

or any combination of the above not exceeding two years in duration. Where the offence is punishable under the Criminal Code by life imprisonment, a maximum term of three years is allowed.

The YOA spells out strict rules on the admissibility of evidence. Statements must be voluntarily given, and young persons must be properly advised that they have the right to make *no* statement to authorities, that any statement they do make *may* be used against them, and that they have the right to consult with a counsel or parent, or other adult of their choice, prior to making such a statement.

As a concession to the special needs of young offenders, the law provides for a pre-disposition report to be made to the judge to assist him or her in the choice of disposition, that is, a report intended to advise the judge as to what would be best for the child. This report is to include an interview with the young person and her or his parents, an opinion of her or his character, behaviour and attitude, past history of convictions, school attendance and performance and an indication of the willingness of the young person to respect alternative measures.

## SOME CONTENTIOUS ISSUES

Several areas of the *Young Offenders Act* have emerged as contentious. First, whereas the old *Juvenile Delinquents Act* considered children over the age of seven to be responsible for criminal acts, the new YOA considers children under the age of 12 immune from criminal proceedings. The question has been raised of older people using children under 12 to carry out illegal activities, such as drug dealing and theft, because of this immunity from prosecution. In Canada, in 1983, there were 1,777 criminal offenses committed by young people aged seven to eleven, mostly involving crimes of property, arson, sexual assault and possession of offensive weapons.

Another area of concern is the provision that a judge may use his or her discretion to transfer to an adult court a youth over 14 years of age. Statistics have shown that this is most likely to happen in Manitoba, and least likely to happen in Ontario. This is currently the subject of a proposed amendment, i.e. an attempt is being made to delineate the conditions under which a youth should be transferred.

Critics of the YOA have complained that, because of the maximum disposition of three years, some teen-agers are literally getting away with murder. Suggestions have been raised by various groups about increasing the maximum term imposable. Other suggestions have been made that what is needed here is a clear and objective test to determine whether or not to complete a transfer to adult court. The Supreme Court of Canada is reviewing a case dealing with the transfer provisions, and it is hoped that this will result in the law being applied consistently and fairly.

Although the *Young Offenders Act* was not intended to touch the area of education, the shift in emphasis created by the new legislation has had, and will likely continue to have, many implications for the school boards, simply because so many of the young offenders are school age. It has rapidly become apparent that at least two major areas of concern need to be worked out - search and seizure, and the definition and clarification of the role *in loco parentis* that teachers are called upon to play. Clarification needs to be made of the balance of the students' right to freedom from unreasonable search and seizure, as set out

in the Canadian *Charter of Rights and Freedoms*, and the rights of schools to establish and enforce rules of conduct, as mandated by the provincial education legislation. To date, there have been no firm judicial decisions on matters relating to the YOA in educational administrations, but educators would be well advised to be aware of the current legislation and proposed amendments, and to consider some of its potential implications for their administration.

In 1989, the Canadian Education Association sent out a questionnaire on the *Young Offenders Act* to 120 representative school boards across Canada. It consisted of 20 questions, asking the boards how they had handled situations, what problems had arisen, what policies had been established, and what their opinion was of the legislation. We received a wide variety of responses, which were often dramatically different from one board to another. We feel it is worth sharing the experiences, policies and procedures in hopes that it will allow educators to become more aware of problems that may confront them further down the road, and to perhaps draft out some guidelines before an urgent need or crisis arises.

**School Boards Responding to the YOA Questionnaire**

| | Questionnaire Sent | Replies | Percentage | Policies |
|---|---|---|---|---|
| Northwest Territories | 1 | 1 | 100 | 0 |
| Newfoundland | 4 | 3 | 75 | 0 |
| Prince Edward Island | 4 | 3 | 75 | 0 |
| Nova Scotia | 5 | 2 | 40 | 0 |
| New Brunswick | 11 | 7 | 64 | 0 |
| Québec | 15 | 5 | 33 | 0 |
| Ontario | 26 | 16 | 62 | 5 |
| Manitoba | 11 | 6 | 55 | 2 |
| Saskatchewan | 9 | 5 | 56 | 2 |
| Alberta | 20 | 14 | 70 | 4 |
| British Columbia | 14 | 9 | 64 | 0 |
| Total | 120 | 71 | 59 | 13 |

*Canadian Education Association*
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## SCHOOL BOARDS WITHOUT EXPERIENCE WITH THE YOUNG OFFENDERS ACT

Nearly 20 per cent (13 of 71) of the responding school boards reported no experience with the *Young Offenders Act*. Over half of these were in Alberta (4) and BC (3). Of these 13 boards, seven either had plans for a *Young Offenders Act* policy in the works or could see the need for one in the near future, while the other six could foresee no need for such guidelines.

## THE UNDER 12S

Whereas the old *Juvenile Delinquents Act* recognized children as young as seven to be responsible for their criminal activities, under the *Young Offenders Act* only children who have reached the age of 12 on the day of the alleged offence can be made subject to youth court proceedings. Police cannot lay criminal charges against anyone under 12; they can only take them home or, depending upon the provincial legislation, turn them over to child welfare authorities.

A fair majority of the respondents to the CEA survey (31 of 71) reported involvements with, and concerns over, the immunity from criminal liability of children under 12. Geographically, the highest level of involvement was in Saskatchewan (4 of 5), British Columbia (4 of 6) and Ontario (9 of 15). The areas with the fewest problems with children under 12 were Newfoundland, New Brunswick, Prince Edward Island and Quebec. There seems to be a trend toward more involvement in this area as one travels west in Canada. In eastern Canada only one-third of the school boards reported problems with under-12s, whereas this figure nearly doubles in Ontario and the western provinces.

The immunity from criminal prosecution for under 12s has led many school boards to express frustration at their inability to do anything either to help the child or to hold him accountable for his actions. In London (Ont) they have had "verified cases of theft by children under 12 and been unable to respond."

A complaint voiced by several boards was that because of the immunity provision of the YOA, in cases of vandalism or damage by children under 12, restitution can be sought from parents but they cannot be compelled to pay. A dramatic example comes from Peace River: "Recently, children aged 6, 9 and 11 broke 47 windows in school buses and countless others in a school building. The parents have been requested to pay at least the insurance deductible but there is little we can do if they refuse." Yellowknife (NWT) agrees: "Under the JDA, the board would assess parents for damages like broken windows caused by their children, but now, other than reporting and repairing, there seems that there is nothing to be done."

A closely allied problem is mentioned by the East York Board of Education: "People in the community cannot get recourse through the legal system for damage done by children under 12. As a result, the board has received an increasing number of requests to act against youths who are a problem."Some boards see a solution in dealing directly with parents, but as Summerside (PEI) admits, this can have "varied results."

Fourteen of the responding school boards favoured referring unmanageable children under 12 to local youth, child welfare, family, or other social service and community agencies. Although results are sometimes less than hoped for, there is generally praise for the co-operative efforts among schools, school social workers, child welfare and mental health professionals and the community agencies. A typical comment is from Calgary (Public): "The situation regarding young offenders under 12 is dealt with through Alberta Social Services, and the school board and social services have a very good working relationship." The need

for co-operation is summed up by the Saskatoon Catholic Board of Education: "The educational system can not nor should it be expected to deal with such children without the support of other agencies. A multidisciplinary approach is needed with shared funding, facilities and responsibility."

Perhaps the most common complaint against the immunity provision for under 12s is that it makes the teaching — and learning — of responsibility for one's actions difficult. This is summed up by Halifax: "Children should learn that there are consequences in life - any other lesson does them a developmental disservice." In Edmonton, the public board noted: "This has resulted in some difficulty in developing student accountability for their illegal activities. In some cases this has led to student disrespect and belligerence towards the law." Several boards mentioned the lack of appropriate treatment options available, although other boards do arrange for some treatment through a liaison committee or social service agency. Others have found suspensions to be one method of dealing with the criminal activities of under 12s.

Many people, not just school administrators, have suggested that this is one of the more serious flaws in the *Young Offenders Act*. Warman (Saskatchewan) is not alone in its assertion that "there are children at age 12 who should be criminally responsible for their acts. They are quite capable of plotting and executing a criminal act - it's not just an outcome of childish innocence." Woodstock (NB) reported problems with "children who are aware of this and push to the limit." The Peel Board of Education in Mississauga, Ontario, raised another issue: "It appears that they are often used as "mules" by Young Offenders or adults who take advantage of their immunity from prosecution." The board in Scarborough agrees that there are problems and urges "that the age of criminal immunity be lowered to 10 years."

## ADMISSIBILITY OF EVIDENCE AND STATEMENTS

Section 56 of the *Young Offenders Act* deals with the admissibility of statements made by young persons accused of offences. This section spells out that, in order to be considered admissible evidence, an oral or written statement made to a peace officer or other "person in authority" must be made *voluntarily*. The person to whom the statement is given must explain clearly to the young person that he or she is under no obligation to give a statement, and that any statement which he chooses to make may be used against him. In addition, the person in authority must advise the young person that he or she has the right to consult with counsel or a parent, or another adult relative or any other appropriate adult, before making a statement. Any statement made by the young person must be made in the presence of the adult he chooses, although the accused does have the right to waive this requirement. This waiver must be made in writing.

There remains a fundamental question to be resolved, the question of *in loco parentis*, whether the principal or teachers are to be seen as persons in authority, comparable to the police, or as counsel or advocates aiming to protect the student from the police. The doctrine of *in loco parentis* is defined:

> *The parent may lawfully correct his child, being under age, in a reasonable manner, for this is for the benefit of his children....He may also delegate part of his parental authority during his life, to the tutor or school master of his child; who is then in loco parentis and has such a portion of the power of the parent committed to his charge, viz, that the restraint and correction, as may be necessary to answer the purpose for which he is employed.* 1

1. William Blackstone, *Commentaries on the Laws of England*, pp. 452-453.

Is the principal or teacher acting as a parent to protect and guide the student? Or is the principal or teacher to be seen as a public servant and therefore an agent of the government, i.e., the equivalent to a police officer?

Several key questions present themselves here: Does a principal, in order to maintain good conduct in the school, have the right to interrogate students? to search a student's person, property or locker? Here we will examine two cases that have looked at the definition of "person in authority." The 1986 case of *R. v. M.H.* involved a young offender in Edmonton who had stolen money from a teacher's purse and was subsequently questioned by the principal. In this case, the Alberta judge held that there was a breach of Section 56 (2), because the principal was considered to be a "person in authority" and did not, as such, give the accused the warning that he had the right to consult with a parent or other counsel. The theft charge was then dismissed. In the second case, in 1986, in *R. v. J.M.G.*, the Ontario Court of Appeal considered the case of a student convicted under the YOA of possession of marijuana, and found that the principal was not a "person in authority" for the purpose of the confession. The judge ruled that the search was justified and indeed dictated by the circumstances because the principal had received a tip that the student was harbouring drugs. The court also quoted as the basis for its decision the *Education Act of Ontario* which requires the principal "to maintain proper order and discipline in the schools."

Since there has not yet been a decided Canadian case on the issue, and interpretation has been shown to vary from one province to another, it has been argued that the young offender still has the right to security of the person, as set forth in the Canadian *Charter of Rights and Freedoms*. Many school boards would appear to be acting prudently in advising the "person in authority", i.e. the principal or designate, to contact the police at the first indication of what may be criminal activity, and to refrain from any searches, of the student, locker, gym bag, etc. The police have more training and experience in this legislation, and it is vital that this initial interview follow proper procedures, otherwise a young offender may escape prosecution totally because the evidence obtained through an illegal search or questioning is later ruled inadmissible by a judge.

## CAUTIONING PROCEDURES

Twelve of the 58 school boards that reported experience with the *Young Offenders Act* encountered problems with the cautioning procedures. More than one-third of these were in Ontario alone. Across Canada, nearly one board in four had encountered some problems with the cautioning. It is perhaps noteworthy that there are so few complaints of students having escaped justice through the technicality of not having been properly cautioned before admitting their guilt. Twelve boards expressed concern about this section and reported problems in this area, but only four boards told us of criminal acts that have gone uncharged because of improper cautioning. Cornwall (Ont.) realized the potential for problems in this area, as they stated: "Most of our school administrators are aware of the legal provisions and are careful to meet the requirements. It is difficult for teachers, however, to remember the restrictions in the home and during class give and take. We have had the occasional delinquent act go uncharged because a student's admission of guilt came without pre-warning." Scarborough had "some evidence deemed inadmissible in court", but the St. James-Assiniboia School Division No. 2 in Winnipeg is the only school board which offered details: "In one case, a charge of arson was dropped due to improper cautioning procedures."

Several of the 43 school boards that reported no problems with the cautioning procedures nevertheless had comments. Seventeen boards noted that their staffs had been made aware of the process through in-service, workshops or

other types of staff development. In the vast majority of cases, boards see this responsibility as falling to the school administrators, principals and vice-principals, and some 60% have concentrated on informing these people.

In addition to the staff training and providing a detailed section in an Operating Procedure manual, the Board of Education for the City of Hamilton has thought to provide the following pocket card for the principal to consult, should a situation involving a Young Offender arise.

**Principal's Guide to**
**Police Interviewing Students**
**Y.O.A. — SEC. 56**

1. Call parents as soon as possible.
2. If parent unavailable, student asked if there is any other adult s/he would like to be present (relative, lawyer, teacher, etc.)
3. Student advised to give no statement to the police until person chosen arrives.
4. Advisor and student to have a reasonable time for consultation.
5. Student may waive his right to have anyone present.

SEE OPERATING PROCEDURE SP - 05 FOR FURTHER DETAILS

Approximately one-third of the responding boards have initiated programs that attempt to inform all staff members of the legal requirements of the new legislation. Some boards have designated people responsible for seeing that due process is accorded students. In the high schools of Regina School Division No. 4 these are known as Resource Officers.

Nine of the responding school boards avoid the whole problem by immediately handing it over to the police. These boards tend to separate "school activities" from "criminal activities" and call in the police promptly to conduct interviews in cases where they suspect that criminal charges may be laid. Dryden (Ont.) - which has an extensive guideline on police interviews - uses a simple formula: "School administrators handle these situations by telling the student not to say anything about the 'crime' and immediately phoning the police."

All boards that responded attempt to co-operate with the police, but some raised a vague concern about the potential for conflict with the police.

Seven boards felt that their staff were not familiar with the cautioning procedures. Although the board in Brandon (Man.) has had no problems, they "doubt very much that administrators are familiar or comfortable with these statement procedures." Many boards will agree with Saskatoon Catholic, which has undertaken in-service on the YOA and has knowledgeable staff dealing directly with YOs, but feels that "more in-service aimed at the mainstream personnel, such as teachers in regular programs, may be needed." In St. Albert (Alta.) any contentious issues "are referred to the lawyer from the Alberta School Trustees' Association for legal opinion."

There is a general unease among many educators with regard to this, and other sections of the YOA. This is expressed by the board in Fort McMurray (Alta.): "This provision seems to intimidate and inhibit staff from acting. The introduction of legal language seems to convey a message that this is not the school's jurisdiction."

## POLICIES ON STUDENTS CONSULTING WITH STAFF

One of the rights granted to YOs under the YOA is the right to consult with an adult before they make any statement to authorities. In general, this was taken to mean the child's parent(s) or guardian(s), but another adult, such as a lawyer, may be substituted. In some cases, the student may choose someone from the school staff to consult, either a teacher or a principal or vice-principal; but again we run into the lack of a clear definition of *in loco parentis*. Is the teacher or principal to be seen as a person in authority? Or is he or she to be regarded as a counsel, an advocate, acting as a parent would, for the young person? (In 1986, an amendment to Section 56 of the *Young Offenders Act* spelled out that the adult consulted is not to be considered a person in authority.) Complicated and potentially conflicting situations might develop in these cases, so the school boards were asked if they had developed any policies to deal with such problems.

Of the 58 repliers, 14 boards reported having policies established to deal with such occurrences. In general, boards with policies all agree to three basic parts. After establishing the need for the interview and the credentials of the interviewers, the school principal or designate will: 1) make every attempt to contact parents; 2) be present when any student is interviewed by police or other authorities; and 3) confer with the student *only as a last resort - when no one else is available*—to safeguard the student's rights. One board pointed out that the teacher or principal does remain free to refuse to confer with the student, if he or she feels that a potential for serious conflict exists.

## SEARCH AND SEIZURE

The Canadian *Charter of Rights and Freedoms* accords to students and all young offenders the right to protection against unreasonable search and seizure, and this right is reinforced in the *Young Offenders Act*. However, it is generally recognized that educational institutions have the right to expect their students to comply with their codes of conduct; this is often spelled out in the provincial *Education* or *Schools Act*. These two different rights present a problem to school administrators who, in the course of their duties, encounter a situation that may be considered criminal activity. Are they to uphold the rights of the young offender? Or should they be taking a more aggressive stance towards enforcing the law?

Only 12 of the 58 school boards replying to the CEA survey reported any troubles with the search and seizure provisions of the YOA. Interestingly enough, the school board in County of Newell #4, in Brooks, Alberta, attributed the lack of problems to their being a rural area.

Across the country, reaction was mixed. Seven Oaks School Division No. 10 in Winnipeg voiced its concern about the new legislation: "It has raised the level of awareness and the need to follow correct legal procedures. This has meant an education process for school personnel." Half a dozen other school boards have not had any problems with these provisions but are concerned about the possibilities. In School District No. 36 (Dalhousie, N.B.), they feel that "the potential for problems is evident if we do not follow the proper procedures."

Nine other school boards reported no problems with the legislation. Generally, these boards avoid problems by "calling the cops." They made a distinction between the functions of the schools and the police, and, as the Ottawa Board of Education states: "The YOA has clarified the respective roles and the schools do not perform a police function. This may however result in youth entering the criminal justice system sooner than under the JDA." In Scarborough (Ont.), they find that "it has become more difficult to initiate a search of lockers and their contents. School administrators are now postponing any search until

a police officer is present." In St. Albert (Alta.) they have "a policy with procedures to follow as well as consulting a lawyer from the Alberta School Trustees' Association."

Several boards expressed the opinion that the YOA has made the issue of searches more difficult. In the Calgary separate board, "schools feel that their hands are tied." For several boards, the entire matter is confusing and intimidating for all those involved. In Brandon (Man.) there is "some confusion about adminstrators' rights to search person or locker. Confiscation of weapons, contraband, alcohol, drugs in possession of student could be clarified." The Leeds and Grenville Board of Education in Brockville, Ontario, has problems defining the limits of searches: "Searching has been a problem. There is confusion over the distinction between personal property, such as a gym bag, and board property, like a locker. Some schools announce that lockers may be opened."

Peace River School Division No. 10 in Alberta supplied us with the section from their policy handbook dealing with Interrogation of Pupils. The regulations include:

> *Students and their parents shall be informed at the beginning of each school year or semester regarding any school policy in effect that student property is subject to periodic searches of a general administrative nature for contraband and rule violations.*

Appendix 1 of that section of the policy handbook is the form to be given to students to sign acknowledging the board's giving itself permission to search the lockers, etc.:

> *Please be advised that student desks, lockers and other property supplied by the Board of Trustees, Peace River School Division No. 10, are subject to periodic searches by the Principal or his designate to ensure there are no violations of School Board or School Regulations with regard to unlawful substances contained therein, and/or relating to cleanliness and personal hygiene.*

This policy cannot be generally recommended, as Peace River admits that their policies "pre-date the legislative changes. We don't know how well it would hold up in court."

The East York (Metro Toronto) Board of Education had concerns about the search and seizure provisions: "As a result of this additional limitation, there is a reduced tendency on the part of school staff to search lockers, etc., even when there is strong suspicion that illegal substances may be present in the locker." It is worth noting here that East York was one of the few school boards that attached a copy of a memo sent to principals and vice-principals dealing specifically with the question of the "Principal's Power of Search."

We are reproducing this memo in its entirety, but wish to stress that this is one board's policy, one that apparently remains untested in court:

> *I have received a recent statement from our Board Solicitor regarding the appropriate stance for Principals to take in situations where a principal may wish to search the locker, property or person of a student. Based upon current court rulings, our Board Solicitor has advised that the appropriate stance for Principals is to conduct a search where it is necessary for the Principal to carry out duties under the* ***Education Act*** *to maintain order and discipline in the school, even if as a result of that search, evidence may be obtained that might be used in a criminal proceeding. The courts appear to be stating that the rights under the Charter to be "secure against unreasonable search and seizure" apply to a Principal or his agent*

*only when they become an agent of the police. Courts have not defined exactly where the line is crossed when the Principal becomes an agent and each case, should it be challenged, would have to be ruled on by the court. Our Solicitor feels that the point at which the Principal is certain that the Police will be contacted is the point at which the Principal would either cease the search or make the student's rights known to the student if the search is to continue.*

*As is so often the case in these matters, there is no clear cut rule, but the Principal will have to make an educated decision given the circumstances in the case.*

In Yellowknife (NWT), they have a slightly different problem: "We have had to caution at least one principal about co-operating with the RCMP in searching lockers without warrants, etc."

Two boards - Moose Jaw (Sask.) and Fort McMurray (Alta.) - have had no problems with the law but are nevertheless in the process of developing policies to deal with possible conflicts in the future.

School District #44 in North Vancouver raised another issue: an improper search and seizure procedure may be embarrassing to the student as well as detrimental to the image of the authority conducting the search. "Recently, a handicapped student was dealt with harshly by the police in front of many students. This did not help the student or the image of the RCMP."

The Lakehead Board of Education in Thunder Bay mentioned a court case in which a conviction was upheld after two appeals, which seems to indicate that boards should be paying close attention to the young offender's rights, as they are subject to challenge in the courts.

It would appear that, for the time being, courts will be deciding these on a case by case basis, trying to determine if the search was unreasonable that is, what is the student's right to privacy and what is the government's right. Courts will likely also examine the nature and seriousness of the accusations or suspicions, the age and history of the student, as well as how intrusive the search was. And the courts will continue to try to resolve the major question: is the teacher or principal an agent of the government for whom the cautioning provisions apply? Or is he or she to be seen as defined under the *Schools* or *Education Act*, as charged with maintaining discipline and therefore not a "person in authority" as the YOA sets out? How do we define *in loco parentis* in relation to the YOA in the schools? This brings us back to the Canadian *Charter of Rights and Freedoms*, specifically Section 8, where the judge would try to determine if the search were reasonable by asking if it was "prescribed by law" and "demonstrably justifiable in a free and democratic society."

Without any decisive judicial decisions thus far, many boards are being cautious in instructing their personnel to leave any search and seizure to the police who have more training and experience in the *Young Offenders Act*. In any event, it would appear that boards are well advised to establish some concrete policies and procedures to be used in case a situation involving a young offender arises. Boards should be asking: Should principals initiate a search and/or interrogation? In what kinds of situations do we call the police? How soon should we call them? Should the teacher or principal volunteer to be the student's "other adult" or counsel? Or should he or she accept if the student asks him to assume that role? What should be done if police arrive at school to interview or arrest a student? To what extent do we co-operate with the police? What should we do so as not to obstruct the police? How should the principal document the case, i.e., what notes should he take of his initial discovery of the incident and the evidence, the police arrival, his attempts to contact the parents, what was said to the student, etc.? We have attached as appendices some sample policies on the *Young Offenders Act* which were received from the school boards.

## PRE-DISPOSITION REPORTING

To assist the youth court judge in deciding what to do with a young person who is found guilty of an offence, that is, what disposition ("sentence") to make, Section 14 of the *Young Offenders Act* provides for pre-disposition reports to be made to the judge, "where a youth court deems it advisable."

This pre-disposition report shall include:

- the results of an interview with the young person and, where possible, with his parents.
- the results of an interview with the victim, where possible
- the age, maturity, character, behaviour and attitude of the young person
- plans to change his or her conduct
- previous findings of guilt
- availability of community services
- relationship between the young person and his or her parents
- the school attendance and performance record and the employment record of the young person

School personnel possess some very relevant information about the accused young offender. The pre-disposition report could include the grade level, attendance record, any involvement with the school attendance counsellor or guidance counsellor, any contact with the school psychologist, details on failures or placement in special classes, as well as any other difficulties in school, with classmates, teachers, etc.

The CEA survey asked the school boards if their schools had become involved in this pre-disposition reporting, and if so, to what extent and how it had progressed.

Of the 43 boards with some involvement with pre-disposition reporting, eight said nothing about the frequency of board involvement with the justice system. Of the remaining 35, about one-quarter reported generally high levels of contact. The remaining three-quarters were evenly divided between low and moderate levels of contact between the schools and the justice systems. There is no strong geographical pattern. Ontario has the highest level of pre-disposition reporting involvement (more than 90%) and Quebec has the lowest (0). However, the Maritimes and Western Canada are almost identical - about one-quarter of the reporting school boards.

There is a consensus that schools and the boards have (or at least should have) a place in the process of deciding what is best for a young offender. No one felt that the boards ought not to be involved, but there was a feeling that clarification is needed. As the Saskatoon Catholic Board of Education phrased it, "Guidelines do not appear to exist regarding pre-disposition reporting. Often schools are approached initially but are absent from the process when critical educational decisions are made. Lack of consistency would characterize problems in this area."

About 40% of the responding boards complained about a lack of contact between the school and the justice system. As the Metro Toronto Separate School Board phrased it: "Generally it seems schools are more than willing to participate in pre-disposition reports but are often frustrated at the reluctance of the criminal system to request their input, or take seriously their recommendations for a YO."

Some boards, such as in Stephenville, Newfoundland, complain not about a lack of contact between the schools and the justice system, but rather that "the recommendations of school counsellors and principals are largely ignored even when requested."

A central problem for some was an increase in the amount of time staff needed to supply the necessary information. For example, the Peel Board in Mississauga, Ontario, noted a "substantial increase in the amount of time

required by staff to respond to requests for information from probation officers. During this school year [1989], the chief social worker received 112 requests for pre-disposition reports, custody and supervision orders."

Seven school boards mentioned the fact that they could only release information to the courts and others after a consent form was completed by the legal parent or guardian or a student who has reached the age of majority. However, the school board in St. Albert (Alta.) felt that "the authority to seek and obtain information comes from the *Young Offenders Act*. This has not been a problem."

Even in school boards where there is a low incidence of contact, such as in Thunder Bay, Ontario, there is a very positive feeling. Despite the "mixed results from involvement in pre-disposition reporting," they still feel that "schools should be more involved." This sentiment is echoed by Seven Oaks S.D. No.10 in Winnipeg: "Providing such information is valuable and should be promoted in order to provide the most detailed picture of the YOs." The Calgary Catholic Board of Education raised an obvious point: "Students spend five hours a day in school and the staff is an invaluable source of information; however, they are seldom asked for input. A more collaborative approach is essential to best serve students."

## LIAISON WITH VARIOUS AGENCIES DEALING WITH YOUNG OFFENDERS

A staggering 91% of the school boards replying to this question claimed to have some system of liaison with social service agencies dealing with young offenders. Of these, 28 (48% of the total) reported a formal, regular and on-going system of liaison. Some 25 others (43%) mentioned less formal networks of contacts.

There is a geographical pattern. In Western Canada, there is far more formal, on-going liaison between schools and outside youth agencies than there is in the east. In the four western provinces (Manitoba to B.C.), over three-quarters (16) of the replying school boards have some type of regular, continuing contact with outside agencies. On the other hand, in the five most easterly provinces (Newfoundland to Que.) only one-third of the boards (5) report such associations. Part of the explanation for this may be size and population density. Generally, and of necessity, urban centres have a higher degree of bureaucracy than do rural areas. The more people, the more complicated things appear and the more complicated structures are deemed necessary. For example, the Dryden (Ont.) board reports no need for such formal structures: "the small populations in the communities served by our board allow workers to get to know each other better."

In Saskatoon, the population base is such that they see a need for more formal structure. The public board's job descriptions for its counsellors and social workers include "responsibilities for liaison and networking with community agencies and organizations." At the Saskatoon Catholic board, "pupil services personnel, high school counsellors and police liaison officers work together with agencies involved with Young Offenders." In Brandon (Man.), they have no formal policy, but "the clinical social worker and the attendance officer attend court regularly and attempt to give information on youths who are known to the school system."

Liaison with local authorities is through the Student Services and Psychological Services in Moncton (N.B.) and the Attendance/Family Support Workers in Brockville (Ont.), while the Calgary Board of Education has a special "Liaison Officer to deal with the different agencies, share information and make recommendations regarding policies and other concerns." In some systems, such as Regina and Saskatoon, preventative intervention, in the form of police liaison officers in the schools, helps students and staff understand their rights and

responsibilities under the law.

Some boards have established committees which meet regularly to discuss policies and review cases. Regina has "an inter-agency committee for a more formal structure" and Hamilton (Ont.) has an Attendance Review Committee and a Committee on Delinquent Adolescents. British Columbia seems to have the most highly evolved bureaucratic system. Boards such as Coquitlam, Surrey and North Vancouver report that the Inter-Ministerial Childrens' Committee (IMCC) operates at both the local and regional levels, and meets monthly. This committee also deals with the problem of children under 12 committing offences.

Many school boards reported that their liaison work had begun before the *Young Offenders Act*, and that it was on-going. A significant number of the boards indicated that they had an informal type of "network" which shared information, consisting of the teacher, guidance counsellor, youth worker, social worker, probation officer, superintendent, etc. The most successful programs are generally those with the best systems of communication, whether these be inter-agency committees or less formal networking arrangements.

The majority of boards seem to indicate that some form of liaison, whether formal or informal, is highly desirable and in the best interests of the young offender. This reinforces the feeling that schools often do have a good idea of the character of the student, and thus are able to make a significant contribution to any dispositions made or treatment undertaken. Communication between all parties involved seems central to the school boards' shared goal, that is, assisting the young person to overcome the problems which caused him or her to be labelled a "young offender."

## SECRECY PROVISIONS

Section 38 of the *Young Offenders Act* outlines quite clearly the protection of privacy for young persons. It prohibits the publication of the name or any other information which might serve to identify the young person in any report of an offence committed or alleged to have been committed by a young person. This secrecy provision has been criticized as a source of problems, especially when it involves dangerous or violent young offenders.

A slight majority of the boards who reported experience with the YOA (27 of 58) indicated here that they had encountered either no experience or no problems with this secrecy provision. Dalhousie (NB), in fact, called the whole question "a tempest in a teapot." However, 25 others (48%) raised concerns of varying severity in this area.

The concerns of many were summed up by the Cornwall board: "Some of our schools have had dangerous YOs and were not aware of it. This may provide equality of treatment but could also result in problems that might be prevented." A lack of communication is one of the main sources of problems, often giving boards cause for concern for the safety of both staff and students. For instance, Peace River, Alberta, reported: "It has caused at least one (later convicted) murderer being placed in our schools without our knowledge! It precipitated a high level meeting with appropriate officials when an incident occurred involving the student, and the facts came to light." School District #15 in Moncton, N.B., reported similar concerns over this provision: "One highly disturbed YO with pedophile habits and a potential for violence was released to us without identification."

There is a great deal of confusion over the secrecy provision. As the board in Brockville (Ont.) puts it, "'Secrecy' has been misinterpreted so that *often* people

involved in the disposition are not even informed. This is *not* the intent of the legislation." The Peel Board of Education in Mississauga, Ontario, noted that they are rarely advised when an arrest has been made as a result of vandalism to Board property, and that police told them that the only way the Board could identify young offenders would be to check the court docket. This means that the board is not able to make an official request for restitution. And even when the board does receive a cheque identified as "Restitution Payment," the court will not permit any information that would identify the offender, date, location and total amount ordered, all of which makes reconciliation impossible.

Some boards have found innovative ways around the problems. In Winnipeg School Division #1 and St. James-Assiniboia #2, they are aware of the situation because of their on-going liaison with agencies, such as Child and Family Services.

Seven Oaks S.D. #10 is able to help dangerous or violent YOs with special support and treatment because they ask to be informed about appropriate behaviour management intervention strategies "without knowing the criminal incidents in which the YO was involved." In Montague, PEI, information about the YOs is neither broadcast nor concealed but is released to those who "need to know, as judged by counsellors and youth workers."

The school board in Sackville, N.B., reported what may be a reality for many of the smaller communities: "In this small community, identities of YOs tend to be known in spite of secrecy provisions." Brandon, Manitoba, reported no problems with the secrecy provisions, because someone from the board attends court and thus they are able to identify the serious offenders, *unless* it is a youth transferring to their school system from another jurisdiction after sentencing.

Although it is seldom stated openly, there seems to be a certain amount of resentment towards this section of the *Act* and its total ban on publication of the identity of the young offender. Educators clearly want only the best for the children and as professionals they do not understand why they should not be able to see the YOs record so that they can offer assistance through information and recommendations, and, perhaps, participation in some form of therapy. When secrecy provisions are overdone, many voice strong concerns. As the board in Etobicoke says, "The school system has an overriding responsibility to safeguard the safety of all students. Sometimes it seems victims have fewer rights than the offenders. Perhaps consideration should be given to identifying YOs convicted of violent crimes. Where do rights end and responsibilities begin?"

It is worth noting here the Peel Board of Education and W.B. case. The Peel Board had started expulsion proceedings against six students charged as young offenders with unlawful confinement and sexual assault, but the Supreme Court of Ontario ruled, in 1987, that such a hearing would amount to publication of their identity. Some lawyers feel that this ruling will have a serious effect on a board's ability to maintain order and discipline in its schools.

In addition to the secrecy provisions, the CEA asked the school boards if they had developed any methods of dealing with "unofficial" knowledge about the young offender spreading through the student "grapevine," which could conceivably lead to delicate situations.

Of the 58 school boards reporting experience with the *Young Offenders Act*, 24 boards (41%) had no formal policies in place for dealing with unofficial or grapevine knowledge about the YO. Six boards (10%) had no experience with this problem, and two others - Summerside, PEI, and Dalhousie, N.B. - acknowledged the reality of the problem but admitted that there was little that could be done. Nearly one quarter of the responding boards (14) mentioned some type of informal policy for dealing with such "gossip," and eight boards have formal structures in place. Nine school boards have no board-wide policy, but they allow individual schools to solve the problem in their own way, leaving these questions to the discretion of individual principals who are closest to the problems.

Formal policies dealing with this unofficial knowledge are in place in only eight school boards. In most cases these involve committees or other formal frameworks for inter-agency collaboration. In Hamilton, student counsellors in adjustment and guidance meet regularly with youth workers. The Peel Board of Education in Mississauga has the superintendent of operations deal with these problems. The Ottawa Board of Education has a highly evolved system, with multi-disciplinary teams of social workers, psychologists, guidance and administration personnel, liaising with the police and youth workers.

The board in Summerside, PEI, states the reality for many smaller communities: "In a small system the grapevine is a reality that is often uncontrollable." In St Albert, Alta., they do not find this to be a problem and note that "unofficial knowledge regarding a young offender is not seen to be a major problem. A ban on publication does not make information of what happens in court unlawful."

The consequences of this unofficial knowledge are not all negative. As we have seen, there are sometimes communication lapses between the boards and the other youth agencies, and as Peace River states, "the grapevine is often the only way we get information. We usually ask the agency to confirm or deny the allegation so we can deal with the child. They usually comply."

Some boards take great pains to protect the confidentiality of the student: the one in Burnaby, B.C., reports that it "does everything it can to safeguard YOs' rights to privacy and has moved YOs out of a school to a new school in order to give the student an opportunity for a 'fresh start' away from the grapevine."

In boards such as Cornwall, there is no official policy but the problem is handled simply: "We expect professionals to be discreet. Students involved in rumour mongering are counselled and warned. An interesting reality has emerged. Quite often the 'rumours' are the result of Young Offenders 'boasting' about their backgrounds; i.e., image building." Moncton also reported that very often it is the young offenders themselves who identify themselves.

It is not only the rights of the YO that must be considered in these cases. As the Etobicoke Board of Education notes: "In some cases, these 'delicate situations' have put victims and witnesses at risk and have resulted in further police intervention."

By far the greatest number of boards agree with Burnaby, B.C., that good communication and sharing of information through formal and informal structures is the best way to avoid problems with dangerous YOs.

## YOUNG OFFENDERS RECORDS

Under Sections 40-46 of the *Young Offenders Act*, young offender records are to be kept confidential and destroyed after a specified crime-free period. What the *Act* does not mention is any effect on school records. Schools could conceivably receive some information to be added to their records which might suggest that a student was a young offender, even if it were just a change of address to a group home. Some boards do get some kind of "forensic file" or record, because the agency sends it to them under the assumption that this is not publishing the identity of the young offender, i.e., it is not made known to the media.

None of the boards responding had any knowledge of the provision to destroy YO records. In fact, most told us quite emphatically that they do not keep YO records. Although nearly a quarter of the respondents say that they never handle YO records, this does not solve the problem, for, as the Hamilton (Ont) board states: "How does one avoid placing YO school data, group home address, etc., in the Ontario Student Record?" Two boards have avoided the problem. Summerside, PEI, has their "own policy regarding confidential files," while the

London Board of Education feels that it avoids the problem by "maintaining the rules of confidentiality as specified in the Ontario School Record Manual."

Fifteen school boards reported that they had not been informed about these provisions and that their handling (and destruction) of YO documents was not monitored by authorities. As the Stormont, Dundas and Glengarry County Board of Education (Cornwall, Ont.) put it: "No schools have been *requtred* to destroy records or limit access to them. This, of course, is an indication that authorities have *not* approached schools concerning limited access or destruction." The Scarborough Board of Education exemplifies the confusion about these vague and misunderstood provisions: "We were not informed by the authorities and only learned about this requirement on our own." This is echoed by the Peel Board (Mississauga, Ont.) : "There still has been no clarification regarding the destruction of Peel Board of Education records (which may include education records) if the young person is acquitted or requests that the records be destroyed in accordance with the YOA."

Amendments to these sections of the *Young Offenders Act* have been proposed, but nothing has been finalized as yet.

## "SENTENCING TO SCHOOL": CONFLICT BETWEEN FEDERAL AND PROVINCIAL LEGISLATION

At the time of Confederation, authority for education was accorded to the provinces, each of which has their own *Education Act* or *Schools Act*. *The Young Offenders Act* applies only to federal legislation, i.e., it is for offences under the Criminal Code of Canada committed by youth. The CEA thought that there was a potential for conflict here between the federal and the provincial legislation; so we asked the boards for their opinion.

One third of the responding school boards reported some conflict between the federal and the provincial legislation. Nearly two-thirds of the school boards which reported legislative conflicts cited the area of attendance and truancy. The Young Offenders Act provides for probation as one possible disposition, and often the courts make attendance at school one of the terms of probation, "if the court is satisfied that a suitable program is available for the young person." Some educators have labelled this "sentencing to school" and have expressed their concern that the young offenders would be delivered in handcuffs, or that the schools would be forced to assume added responsibility for them, i.e., supervising their probation. The division was exactly even between those boards which had problems with this "sentencing to school" provision and those which did not. As Medicine Hat School District #76 stated: "The conflict appears to be that students are ordered to be in school by the court - although expectations of conduct, attendance and work habits are not clearly defined by the judge."

Many boards agreed with the complaint about poor communication raised by the Dryden board: "When a child is 'sentenced to school' the probation people do not notify the school. If the school finds out it is through the admission of the child. The schools never know what's expected of them; e.g. should they notify probation if the child doesn't attend or if the child refuses to work, etc. ? The school could perhaps be more effective with a child if they had pertinent background information. It would make special programming (if needed) happen quicker." Are the schools expected to provide special programs and special services? Do they need to take measures to protect the young offender? the teaching staff? the other students?

Peace River School Division, Alberta, is highly critical of this option of "sentencing to school." As they stated, "the courts have 'sentenced to school'

people the school board had only a week before expelled! (This was not the only case.) We often do not know who is on probation. The child is protected! It is a fiasco most of the time."

The Calgary Roman Catholic Separate School Board makes the point that "schools have a tendency to view the Young Offenders Act as taking precedence over the *Schools Act*. This is inappropriate, particularly regarding school attendance, which is minimized in the YOA." Peace River agrees: "the YOA and the provincial *Schools Act* are in constant conflict. Many court decisions are at variance with board powers as specified in the *Act*. Where there is a conflict, the *Schools Act* usually loses. It is *ignored* by the legal system."

Several boards commented on the problems encountered when a youth court judge, dealing with federal legislation, orders that a young offender over the age of 16 attend school: under provincial legislation, attendance is only mandatory until age 16. The lack of consequences for non-attendance was brought up by several boards across the country. The Metropolitan Toronto Separate School Board told us: "When the only condition of a probation is 'to attend school' and the young offender is truant, probation officers are reluctant to breach a student. This is a difficult situation for school personnel." The Scarborough Board of Education sums up the powerlessness currently felt by many of the school boards in Ontario: "The (Ontario) *Education Act* still refers to the *Juvenile Delinquents Act* regarding the issue of 'habitual absence'. The *Education Act* continues to require compulsory attendance to age 16 but does not provide for appropriate intervention strategies for non-attendance. Resolution will not occur until the *Education Act* is amended."[2]

Educators normally want only the best for their students; this translates into a desire to see them get the help and guidance they need. But as the Dartmouth District School Board in Nova Scotia, along with several other boards, pointed out, the children are often the ones who suffer because of this gap between the federal and provincial legislation, and the lack of appropriate treatment programs : "Unmanageable truant children continue to fall between the cracks in the system. Child welfare and mental health professionals often are unable to provide service to this group and the students continue to do as they please." However, Garden Valley School Division #26, in Winkler, Manitoba, indicated that they have found one solution to the truancy problem: they charge the parents and not the students when the student is habitually absent.

In Saint John (NB) they seem to have come to some resolution of the problems encountered when a young offender is "sentenced to school." "We do have YOs in school - we do not assume responsibility for terms of their probation. We do not interpret the requirement for YOs to attend school as binding on the school district to accept or retain students who are in violation of the *Schools Act* by being a danger to others or disrupting the learning environment. (...) The courts have accepted our decisions (in a very few cases) not to admit or retain students." In Alberta, St. Albert School District #3 stated a similar interpretation of this provision in the YOA: "It is our belief the Youth Court may require a student to attend school; however a board is not required to accept or retain a particular student." Several boards raised a concern about the potentially negative influence of the YOs on the other students, especially when the YOs do not wish to be there and as a consequence engage in rather disruptive behaviour. School Unit No. 1 in Elmsdale, PEI, voiced a common concern: "We are forced to deal with students

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2 The Ontario Ministry of Education, through the Provincial School Attendance Counsellor, has completed a review of the issue of attendance and non-attendance, which was initiated in 1984 by the introduction of the *Young Offenders Act*. The Ministry has also carried out a series of consultations with the communities and the boards of education, and are currently considering its policy directions for the issue of attendance and non-attendance, and the liabilities there inherent.

who otherwise do not wish to be in school. They can be disruptive and at times dangerous. These YOs may need to return to school with the support or control of an assistant." Red Deer Public School District #104 raised an issue that was echoed by other boards: "Some YOs view attendance at school as an easy 'way out.' This attitude usually leads to a lack of success for the student and a waste of time for the school personnel."

County of Newell #4 in Brooks, Alberta, raised one interesting problem: they have had young offenders from an urban area placed in their schools, because it is a rural area. In these cases, they find: "attendance has been poor, placements are temporary, and many opt for home schooling which results in extra work."

Realizing that good communication and "networking" can be beneficial to the young offender, several school boards across the country spoke of using their liaison systems to accommodate the young offender who has been "sentenced to school." Regina School Division #4 has established some procedures to try to make the best of this situation: "We have an inter-agency committee that consists of members from the justice system, including a young offenders judge, members from the police department, the Department of Social Services and the two school systems in our city. The result of this is that the judges are aware of the difficulty it places schools in if students are 'sentenced to school'."

It is worth noting here that not all boards who reported some experience with this provision viewed it negatively. The Calgary Catholic Board felt that: "the problem occurs when school attendance is *not* part of the probation order." The Hastings - Prince Edward County Roman Catholic Separate School Board told us that they saw this "sentencing to school" as potentially beneficial: "If a child is under 17, we welcome and seek 'School Attendance' as part of any probation order. Staff members are not trained to serve as monitors of probation orders, however, and do not seek the responsibility of serving as probation officers." The East York Board of Education concurred: "We agree that this is a realistic court disposition in some cases. However, better communication with the receiving school must be established by those implementing the court disposition." In the Edmonton Public Schools, they found that "court orders requiring school attendance often enhance the youth's attendance." The school board in Burnaby, B.C., has not encountered problems with this provision; indeed, they seem to be using it in a constructive manner, as they stated: "We work closely with probation services and have input into whether or not this term is requested. We are in the process of developing programs that allow 'hard core' young offenders to continue their education outside of our schools."

Poor communication (between the youth court, social workers, probation officer, schools, etc.) appears to be at the root of the discontent many boards felt at the provision to "sentence to school." Again, good communication seems to be what many boards recognize as important in any instance where the young offender is ordered to attend school as part of his probation order. The boards would prefer that good communication begin with the youth court judge who "sentences to school," that he or she be aware of the implications of this, and that the court be more specific, i.e. ordering the student to obey the school rules. Educators would prefer to know the nature of the offence, the problems the student is facing, what treatment has been ordered, etc., so that they may play a role in his rehabilitation.

Some boards have developed innovative policies and procedures, which seem to be producing positive results from the rather negative connotation of a young offender being "sentenced to school". Most boards are hoping that proposed amendments to the *Young Offenders Act* or the provincial *Education Act* or *Schools Act*, especially the sections dealing with truancy, will lessen the conflict currently in existence between the federal and the provincial legislation.

## "PLAYGROUND LAWYERS": IS THERE TOO MUCH EMPHASIS ON THE LEGAL PROCESS?

Under the old *Juvenile Delinquents Act*, emphasis was placed on the child as a misdirected youth and the courts sought to treat, rather than punish, him. Youthful "crimes" were often resolved informally, with the police serving sometimes only to warn or counsel the young person. Faced with complaints that the "juvenile delinquent" was being denied due process, and often facing harsher sentences than an adult would in similar circumstances, the Canadian government brought in the *Young Offenders Act*, guaranting young offenders their rights, including that to due process of law.

However, concerns have now been voiced that the *Young Offenders Act* has created a system which is overly concerned with the legal process, leaving little room for the informal resolution of less serious infractions. The CEA asked the school boards if they had found this to be the case: one-third responded that yes, they had found too much emphasis placed on the legal process. (One board admitted that even their staff feel intimidated by the legislation.) Some were most emphatic: Yellowknife, NWT, complained that: "the YOA has made 'playground lawyers' of some kids - some poor attitudes are being fostered (allowed to fester?)." This opinion was shared by the Stormont, Dundas and Glengarry Board in Cornwall, Ontario, who felt that: "the YOA encourages using technicalities to avoid the responsibility for acts. At one time police could help us as counsellors to the 'border line' offender. They are reluctant to do so now."

Several boards objected to the newly predominant role played by lawyers in the youth court: they feel that the lawyers are primarily interested in obtaining a discharge for their client, which they try to do by encouraging long delays in the trial and by advising the young offender to plead not guilty even if he has admitted his guilt. Educators have complained that this attitude is ignoring any possibility of arranging for treatment or rehabilitation for the young offender. Part of this was blamed on the fact that the new legislation encourages the principal to call in the police, whereas in earlier years the principal would have dealt with the problem informally, and internally. There were frequent complaints that YOs often do not get the therapy and counselling they need, and that, following the serving of the sentence, there are no follow-up provisions, all of which might assist in the rehabilitation of the youth; here again, educators feel frustrated at their inability to help the child. The Ottawa public board found that: "formality has hurt. Process is now more important than the best interests of the child. We support the best interests of the child, and feel this is often better accomplished through informal action." In Scarborough (Ont.) they find "the emphasis on legal process is in direct proportion to the neglect of 'special needs'. Young people in conflict with the law often need guidance, counselling, therapy and/or treatment. There is no mechanism in place to encourage or support these services."

A common complaint is that court delays and lengthy procedures have done a disservice to the YOs. Calgary Separate board stated: "Students no longer view court as a deterrent but as a game (even though they do not understand it), with no responsibility, no remorse and no consequences." As is pointed out by the Halifax board: "Everything we know about disciplining children requires that responses to inappropriate behaviour should always be relatively soon, fair, firm and consistent." This also gives other students the impression that "crime pays," that no penalty will be imposed, at least not immediately.

Some boards stressed the importance of separating internal school discipline concerns, to be dealt with by the principal as had been done previously, from those that are unrelated to school, and of a more criminal nature. Many boards felt that their principals were well trained at resolving minor offences, and that this was in the best interest of the student. They also recognized the

importance of calling the police to deal with more serious offences, where criminal charges were likely to be laid.

However, it appears there will still be vague cases, where the principal will be called upon to exercise his judgement on the spot about whether to call the police. This would seem to indicate the need for policy development at the school or board level, as well as training for school administrators who may face a situation with a young offender.

Alternative measures, some quite formal, are used successfully in certain districts. Some boards have established procedures, often mentioning their liaison systems or networking. In Winkler (Man.), for example, they have Juvenile Justice Committees which deal with many of these problems. The Saskatoon public board uses its Police School Liaison Officers to deal with less serious infractions, and Calgary Police have a Youth Unit and school resource officers who deal with non-serious matters in an informal fashion. In Burnaby (B.C.): "principals are still able to exercise discretion with regard to the formal processing of charges. The police are co-operative and willing to be involved in ways other than processing criminal charges."

Although there are problems and complaints, the news is not all negative. In Peace River (Alta.) they feel that "There are actually *more* options open to the courts now. We would, however, appreciate more input before someone else makes decisions for us." And although many might agree with Surrey (B.C.) that "the YOA tends to minimize the common sense approach," many others will see the logic to the statement by the Woodstock (N.B.) board "generally it is accepted that the more serious the charge, the more formal the process becomes."

Respondents were also asked to compare the flexibility of the *Young Offenders Act* with that of the previous legislation - the *Juvenile Delinquent's Act* (JDA). Over one-half of the school boards replying found the YOA less flexible than the JDA. About one-third found it about the same as the old system, but only one in ten found the new YOA more flexible.

Complaints of the new inflexibility came from Ontario, where over a third of the responding school boards (11) found the YOA more rigid, followed by British Columbia and Alberta (four each). These three provinces accounted for over 60% of the 'less flexible' complaints. Although some school boards such as Summerside, PEI, thought the YOA was "easier to work with and had better definition," this view seems to be in the minority.

The major complaint about the inflexibility of the YOA has to do with the legalistic approach, what some boards have criticized as so much "red tape." Calgary separate board summed up a feeling common to many of the responding boards: "Lawyers now appear to manage the cases, and other professional opinion has limited impact. Legality takes precedence over the needs and welfare of the child." The board in Brockville, Ontario, pointed out that some boards are being too rigid in their interpretation: "One of the main problems is that some people interpret the YOA verbatim."

Here again, various boards expressed the fear that YOs are not getting the attention they need. The board in Etobicoke (Ont.) asks why YOs have the right to refuse treatment, even if it is in their own best interests. In Calgary (Public), they find that "the overly legalistic system often forces the court to deal with the offence and not with the young person involved. In many cases, alternative dispositions, such as a treatment order under the direction of a child welfare unit, may be in the young person's interest. Once the YO completes his custody sentence, there is little or no effective follow-up, and few programs to facilitate transition."

Even those boards that do not completely condemn the YOA as inflexible still raise questions. For Peace River (Alta.), "the YOA is flexible in some respects, but more rigid in others. We are, in our opinion, over-protecting the offender and, in many cases, leaving him or her with the clear message that crime pays." In

Dryden (Ont.), they find "the YOA is more flexible in penalties for crimes. Children often get off 'too easy'. We feel the YOA is less flexible in procedure and process."

A third of the respondents found no difference between the YOA and the JDA. In Brooks (Alta.), for example, they find that although "students have more rights, and teachers and schools seem more liable, in practice the procedures have changed little." In Sackville, N.B., they rate the two systems about the same, but add that they "suspect we have just not yet been fully tested."

## CORPORAL PUNISHMENT

As part of our survey on the implications of the *Young Offenders Act* for the school boards, we asked the boards if they had banned corporal punishment, and, if not, under what circumstances it is used. Over 60% of the school boards responding to the questionnaire (36 of 58) had formally banned corporal punishment of students, but 21 boards do not have a ban in place. Over half of the school boards that did not prohibit corporal punishment were located in Alberta and Saskatchewan. In Alberta 80% (8 of 10) of the responding boards had not instituted a ban on corporal punishment, while in Saskatchewan and New Brunswick that figure was 60% (3 of 5) each. In Nova Scotia, one of two responding boards bans it; while in PEI and Manitoba the proportion is one in three. In Ontario, 80% of school boards banned corporal punishment (12 of 15), as did all of the boards reporting in NWT, Newfoundland and Quebec. In British Columbia, corporal punishment was disallowed by provincial decree in the early 1970s.

Of the 36 boards that ban corporal punishment, 6 did not know when it was done. The Commission des écoles catholiques in Quebec City was uncertain of the exact date but claimed that it was "over twenty years ago." Some 29 other boards banned the use of corporal punishment in the last 20 years. It is significant that 17 of these (nearly 60%) banned it in the past five years - since 1985. The previous five years (1979-84) account for another four boards (14%), for a total of 21 or 72% in the last decade. The 1970s account for another six school boards, but only if we include the six from BC where the government instituted a province-wide ban in the early 1970s. From this we can see that the banning of corporal punishment by school boards is a fairly recent phenomena.

The boards demonstrated little consistency in reasons for the ban. Generally the ban was instigated by the boards on motion of board members or committees, for several reasons: they felt it was a good idea, their province was moving against child abuse, or other boards seemed to be doing it. Comments of the boards banning corporal punishment ranged from "counter productive" and "regressive," to the feeling of the Commission des écoles catholiques de Québec, "this [corporal punishment] dates back to another era, if not to another century."

Twenty-one boards do not ban corporal punishment but most of these are quick to note that they do not favour its use, and in fact, discourage it. It is rarely if ever used, and when it is employed, it is as a last resort only and under strict conditions, according to established rules. Generally the punishment is given by the principal or vice-principal or with his/her permission. There must always be one or more adult to witness it, and a written report of the incident must be completed. In cases where the instrument is specified, it is the standard strap, but there are universal warnings to consider the age, health, etc., of the youth in question. Many, but not all, school boards notify the parents of the incident, and some boards, such as those in Halifax, Moncton and Medicine Hat, do not administer the punishment without first consulting the parents.

Many of the boards still using corporal punishment are guided by the *in loco parentis* concept. In the words of the board policy in Saint John, N.B.: "A

teacher shall practice such discipline as may be exercised by a kind, firm and judicious parent in his family, avoid indiscreet haste in the discipline of his pupils and, in any difficult cases, apply to the principal for advice and direction." Some boards indicated that they prefer to avoid board-wide policies in order to give more latitude to individual principals. For example, in Red Deer, Alta., "the decision is left to the discretion of the principal. Parents are not necessarily consulted before administration [of the strap], but they may prohibit CP for their child in September, if they wish."

There has been a definite trend away from corporal punishment across the country in recent years. The schools appear to be relying on alternative methods of dealing with the less serious offences.

## CONCLUSION

In this study, we have seen that the majority of school boards in Canada have had some experience with the *Young Offenders Act*, some to a greater degree than others. What we have collected are contradictory opinions: some boards think it works well, particularly those boards that have indicated to us that they do have in place more formal liaison systems, such as police liaison officers, resource officers, juvenile justice committees, etc. In the questionnaires returned to us, we saw that many boards remain unclear about certain areas of the legislation; and this for several reasons.

First, the legislation is either not clear or is lacking sufficient elaboration in some sections, e.g., the destruction of records (no mention made of school records), the definition of a "person in authority", etc. Second, we heard of what some boards consider omissions in the legislation, e.g., responsibility for enforcement of conditions for probation, provisions for transfer to an adult court, etc. These omissions appear to have left some boards in a legal limbo, as they wonder what their role is in probation enforcement, whether they can maintain the same code of discipline they have in their schools, whether they can search lockers, etc. Third, boards told us of areas of the law that they find difficult to understand, i.e. the immunity from criminal proceedings for children under 12, the provisions preventing publication of anything that could identify the young offender, the maximum sentence which is currently three years, etc. Some of these omissions or imprecisions may be rectified by amendments to the legislation, but it appears that what may be needed are more cases going to the Supreme Court to get definitive rulings on the *Act*.

No small part of the confusion and frustration felt by some of the boards originates in the conflict among several different areas of government, such as the federal Department of Justice, the provincial Solicitors General, the provincial Corrections ministries, and the provincial ministries of family and social services. Young offenders may come into contact with the youth court, the principal, the superintendent or director of education, the guidance counsellor or the school attendance counsellor, social worker (who may change several times over the course of a trial), a probation officer, a treatment centre, another school. Our respondents felt that the children in need of help all too often fell between the cracks that exist between all these layers of government.

In addition, boards have pointed out to us the conflicts that can arise between the federal *Young Offenders Act* and the provincial education legislation. Many mentioned the need for a re-working of the education legislation to deal with truancy provisions, specifically the need for some "teeth" in the legislation requiring school attendance. If school attendance is mandatory, the boards are asking that there be put in place some consequences for non-attendance.

Many of the responding school boards felt that the new law places too

much emphasis on the legal process, that procedures are too formal, that the law lacks the flexibility of the old *Juvenile Delinquents Act*. Educators across the country are complaining that under the old legislation they had more flexibility to treat the young person informally, without pressing criminal charges, and that now they must bring the youth to court where often treatment is not provided, either because the youth court judge does not order it, or because the young offender, as is his right, refuses to undergo any treatment. Some do consider it an improvement that young offenders have the same rights that adults have, e.g., the right to decide if he wishes to take treatment, but many educators feel strongly that the young person should not always be given that choice, that many young offenders won't admit to needing treatment, but that, if compelled to take it, they will benefit from it.

This survey of the school boards on their experience with the *Young Offenders Act* enabled us to gather together some ideas about what makes the system work well. As a general rule, the boards that had the fewest complaints with the new legislation were the ones that had in place networking or liaison systems, either formal or informal. "Good communication" was frequently touted as a prescription for making the YOA work, and this on all fronts: with the courts, the probation officers, the teachers and principals, social workers, and the youth. In addition, it is worth noting that the boards that felt most in control of the situation were the boards that had taken the time to study the legislation and to do some planning before a crisis arose, i.e., they had written policies and procedures in place, and had done in-service with their staff so that everyone was aware of the new legislation and of what his or her responsibilities as educators and administrators are.

It must be admitted here that the legislation is not perfect. Some boards think that it has the potential to help, while others remain less optimistic. At present, Canada is waiting for amendments to the *Young Offenders Act* to be finalized by the federal government, amendments which, it is hoped, will do much to clarify the legislation and introduce the changes that so many educators are requesting.

## SOME SUGGESTED READINGS


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# CALGARY BOARD OF EDUCATION: POLICY 6,015 AMENDED 1987

## School Discipline: Interviews of Students - Investigation of Offenses

**I Policy**

When a student is interviewed at school concerning a violation of law for which he/she is believed to bear or to share responsibility, the board expects its employees to strive to ensure that the student is treated fairly and in accordance with law.

It is the preference of the board that interviews of this kind not be conducted by law enforcement officers at school when they are not directly related to school discipline. When, however, these officers require such interviews in the performance of their duties, all staff are expected to give them co-operation.

Before permitting an interview of this kind to proceed at school, the principal or his designate is required to make every effort to obtain the authorization of a parent or guardian. In addition, the principal is required to ensure that the student is informed of his/her right to decline to be interviewed or to make a statement; and of his/her right to seek the counsel of a parent, lawyer or other adult before being interviewed or making a statement.

**II Regulation**

For the purpose of this regulation, an offense is defined as a violation of law for which a student is believed to bear or to share responsibility. Reference to "principal" and "parent" is intended to be inclusive of "designate" and "guardian" respectively. (Interviews pertaining to child abuse are conducted in accordance with regulation 6,016,- Child Abuse).

**A.Internal Investigations**

1. An "internal" school investigation is one initiated and conducted by school staff.

2. In conducting an interview for the purpose of an internal school investigation, administrators and teachers are required to:

a) ensure that the student receives a fair hearing

b) give the student the reason for the investigation and interview

c) ensure that the student is not subjected to threats, enticements or to other forms of duress

d) in the case of students who have attained the age of 12 and with reference to internal investigations which, in the judgement of the principal, might require an external investigation, follow the provisions of Part B-2-a/b (below) before proceeding with an internal investigation.

**B. External Investigations**

**1. General provisions:**

a) An "external" investigation is one initiated and/or conducted by a law enforcement officer

b) Law enforcement officers may be permitted to interview students on

school premises when the performance of their duties makes an interview of this kind necessary.

c) When the principal is unable to satisfy conditions provided for in this regulation, he is required to deny authorization to conduct the interview on school premises and to request that alternative arrangements be made.

d) Before granting the request of a person to conduct an interview with a student in school premises, the principal is required to validate the identity of the person and his/her need for the interview.

e) Before permitting an interview to proceed, the principal is required to make every effort to obtain the consent of a parent. If a parent cannot be contacted, the interview may be held only if deemed by the principal to be essential to the student's welfare.

f) When an interview is permitted by the principal and a parent is not present, the principal is required to attend and to establish a record of proceedings. In the case of students who have attained the age of 12, this requirement may be waived at the request of the student. The principal is required to offer to attend the interview.

g) In general, the principal is expected to act to ensure that the student is treated fairly and in accordance with law in the course of any proceedings held under school auspices.

**2. Students aged 12 and over:**

a) Before permitting an interview to proceed, the principal is required to ensure that the student is told and understands that:

i) any statement can be used as evidence against him/her

ii) he/she need not make a statement

iii) he/she may consult with a lawyer or other adult prior to making a statement

iv) he/she may have a parent or other adult of his/her choice present during the interview

b) In the case of students who have not attained the age of 18, if the student waives his/her right to consultation with a lawyer or other adult, the investigating authority must obtain the student's signature in a dated statement of waiver as follows:

*I _____, have been made aware of my right to consult with a lawyer or other adult of my choosing, have chosen to waive this right and to make a statement without the benefit of such consultation.*

c) School records relating to a police investigation of an infraction of criminal law are to be destroyed should charges be dropped or the student be acquitted.

**III Procedures**

1) Information relating to interviews of students for investigative purposes is contained in the board's handbook entitled "Child Protection: A School's Responsibility." Principals should familiarize themselves and their staff with the contents of this publication.

2) Guidelines for handling the investigation of offenses alleged to have been committed by children who have not attained the age of 12:

**a) Internal Investigations:**

although circumstances may call occasionally for requesting the involvement of the police, in general, offenses committed by children who are less than 12 years of age should be handled by: i) treating the offense as a behavioural

problem; and ii) following normal school and system discipline procedures.

**b) External Investigations:**

i.e., those initiated by a police officer or Alberta Social Services worker - will be handled as provided for in Regulation 6,016.

3) When police or other investigating officers are unable to honour requests made by the principal based on the requirements established in Regulation 6,015, the principal should request that arrangements be made for conducting the interview at the student's home. The police officer is entitled to take the child into custody and to remove him/her from school premises. If this occurs, the principal must ensure that every effort is made to contact a parent prior to the student's departure.

4) Counsellors and other school staff are under no legal obligation to give the police information which has been given to them by a student regarding an offense. If information is given to the police, full disclosure can be required as a part of court proceedings. Before accepting information from a student in confidence, a staff member must make the student aware of any limit to be applied to the confidential relationship.

5) In dealing with a suspected breach of criminal law, the discretion of the principal should be exercised in deciding to proceed immediately with an internal investigation or to delay it until after an external investigation has been conducted by the police. Provided that acceptable grounds for action exist, sxchool discipline measures may be applied independently of and concurrently with police and court proceedings.

6) The proceedings of an interview, internal or external, should be carefully documented with particular attention being given to the following:

- Date
- Time
- Names of persons present
- Information provided regarding rights (external interview)
- Digest of conversation
- Time of conclusion
- Disposition - action to be taken.

## APPENDIX II

### PEACE RIVER SCHOOL DIVISION NO. 10

### Interrogation of Pupils: Policy 5.31 (April 1988)

**Policy:**

The Board of Trustees believes that none of its policies or practices should obstruct the police or Social Services personnel in the performance of their duties. Nevertheless, the principal is expected to act as a reasonable parent might in such matters, and ensure that the rights of the pupil are protected.

**Regulations:**

1) Interrogation of pupils by the police or Social Services personnel shall not normally be conducted on school premises during school hours.

2) The exception of the above is where a police officer has a warrant or the Social Services official can indicate the necessity and reasons for immediate action, or where it can be clearly demonstrated to the principal that such an interview would be in the best interests of the pupil.

3) When a police officer seeks to interrogate a pupil during school hours, the principal shall:

a) attempt to notify the parent or guardian so that they might be present if they wish.

b) request that any interview be delayed until such time as the parent or guardian is present.

c) attempt to safeguard the rights of the pupil until the parent or guardian arrives by ensuring no interview takes place.

4) In cases of the investigation of child abuse or neglect by social workers, principals should **not** contact parents when they are informed that an investigation is taking place, unless specifically asked to do so by the investigating social worker. The responsibility for contact with the parents of the child who is allegedly abused or neglected rests with the investigating social worker.

5) In such cases, principals and/or teachers should **not** insist on being present when the child is interviewed. This situation is not parallel to that in which police officers interview children in the course of investigating an alleged offense by the child. In that case, the principal or teacher is acting *in loco parentis* to ensure the protection of the child's rights. A social worker investigating child abuse is carrying out the legislative mandate for the protection of children; this includes the power to apprehend children if necessary.

6) In all other circumstances, where parents or guardians are not available, the principal may quite properly and legally request that police or other authorities leave the premises, and that the interview be conducted at another time and/or place. However, if a police officer insists upon proceeding, the principal must:

a) comply with the request to avoid charges of obstruction.

b) act *in loco parentis* sitting in on the interview to safeguard the pupil's rights.

c) notify the Division Office immediately

d) ensure the pupil is instructed about what is happening and advise him/her of the right to remain silent.

7) Where circumstances appear to warrant it, the Superintendent of Schools or the Secretary-Treasurer should seek immediate legal advice from the Division's solicitor.

8) In emergent situations where the principal deems there is no question

of compromising the legal rights of the pupil and where immediate information is needed for quick action, the above procedures may be waived. In such instances, the principal should attend any interview and the Divisional office should be notified as soon as possible.

9) Where a principal or his/her designate attends any formal interview or interrogation, he/she should keep detailed notes of what transpires, including actual conversations if possible.

## PEACE RIVER SCHOOL DIVISION NO. 10
## Searches of Persons or Personal Property: Policy 5.32 (April 1988)

**Policy:**

The Canadian Bill of Rights recognizes the right of an individual to life, liberty, security of the person and *enjoyment of property and the right not to be deprived thereof except by due process of law.*

Recent court decisions have indicated with respect to searches of student's persons or personal property in their possession, that there is no authority, legislative or otherwise, assumed or stated to permit a school official to undertake such a search unless the following regulations are adhered to. Failure to observe such procedures could result in criminal charges of unlawful assault and even unlawful confinement being laid against the searcher.

With regard to the searching of individuals or their personal property, the Board of Trustees requires that due process be followed by school officials, whether they be acting on their own or in concert with a civilian authority.

**Regulations:**

1) School officials shall attempt at all times to protect the student's right to privacy.

2) Students and their parents shall be informed at the beginning of each school year or semester regarding any school policy in effect that student property is subject to periodic searches of a general administrative nature for contraband and rule violations.

3) Every student renting or using school property shall sign a document (the Waiver Form attached to this policy) to the effect that he/she has seen and understood the above regulation. This will also be signed by the parent or legal guardian in the case of students under 18 years of age.

4) Before conducting a search for any other reason, there must be reasonable and probable grounds for belief that a criminal offense is being, or has been, committed, that a search of the person or property will provide evidence in these matters, or will lead to the conclusion that the commission of a criminal offense will occur.

5) The grounds for conducting a search shall be recorded in writing by the principal and kept on file.

6) The student's consent to the search of property shall be sought, wherever possible.

7) The student should be present during the search, wherever possible.

8) At least one independent witness shall be present when the search takes place, in addition to the school officials.

9) If the proposed search revolves around a suspicion of criminal activity, the police shall be informed and a proper search warrant obtained.

10) Wherever possible, the parents or guardians of the student shall be informed of the search, and the reasons for it, prior to it being undertaken.

11) Where a student is not present, or does not consent to the search, school officials shall only proceed after due process. This requires that the police be contacted and a proper search warrant obtained.

## Peace River School Division No. 10
## Search of Property
## Waiver Form

Please be advised that students' desks, lockers and other property supplied by the Board of Trustees, Peace River School Division No. 10, are subject to periodic searches by the principal (or his designate) to ensure there are no violations of school or board regulations with regard to unlawful substances contained therein, and/or relating to cleanliness and personal hygiene.

I have seen the regulations and am aware of their contents and implications.

Student Name: _____

Grade: _____ Locker No. _____

SIGNATURES:

Student: _____

Parent/Guardian: _____

Date: _____

## THE BOARD OF EDUCATION FOR THE CITY OF HAMILTON

### introduced April 1974 and reaffirmed August1982

**AUTHORITY**

*In matters of police interviewing pupils during the hours they are in school, parents are to be informed when it is practical, possible and advisable to do so, of the intention to question the pupil(s), and parents are to be given the opportunity to be present.*

It is an accepted position that parents or guardians place their children in our care during the hours that they are in school. Our staff stand *in loco parentis* and may protect students from any irregular influence on their rights.

**PROCEDURE**

It should be noted that, in the following procedures, responsibilities of a principal may be delegated to other appropriate staff members; e.g. vice principal, principal's assistant, teacher, etc.

With respect to the interviewing or arresting of students within the school by the appropriate officer(s), there continues to be a firm understanding between our staff and the Hamilton-Wentworth Regional Police as follows:

. There will be mutual cooperation, wherever possible. Police authorities do not intend to be intrusive with respect to the school program.

. Upon entering a school in the course of his duties, an officer shall report to the principal and exercise due caution and consideration for the school program, staff and students.

**Interviewing of Students by Police**

A police officer may wish to question a student during the school hours at a school. The principal of the school becomes involved for two reasons:

1. During school hours the student is placed in the principal's care—the principal stands "in loco parentis" to the student. The principal has the parental duty to offer guidance and to protect the student from any irregular influences on the student's rights.

2. If a young person (under 18) gives a statement to a police officer, the statement is not admissible in subsequent court proceedings unless several stringent conditions are met. (See *Young Offenders Act* Section 56(2).)

One of these conditions requires that a reasonable opportunity be given to the young person to consult with counsel or a parent, or, in the absence of a parent, an adult relative, or, in the absence of a parent or relative, then "*any other appropriate adult chosen by the young person.*"

The young person must be given a reasonable opportunity to make any statement in the presence of that adult consulted.

Accordingly, we anticipate that, in some cases, students will consult principals or other teaching/guidance staff and that police officers will be urging students under investigation to consult with principals or other teaching/guidance staff.

The principal's duty is to the student. The duty is not necessarily in conflict with law enforcement, however the primary duty is to protect the rights

of the student through judicious consultation.

It should be noted that a student may waive his right to consult and to have the person consulted present while making any statement (see *Young Offenders Act* Section 56(4).)

**STEPS**

1. The principal or designate should attempt to reach parents prior to any interviews that might occur in the school with the police.
2. If a parent cannot be reached, the principal or designate should ask if there is anyone the student would like to have present while police are interviewing the student, e.g. relative, family lawyer, a teacher, etc.
3. A student should be advised by the principal or designate *to give no statement* to the police until the person chosen by the student arrives.
4. If the student chooses a teacher or principal as advisor to provide guidance through the interview or interrogation, a reasonable period of time should be given for consultation between the student and the chosen advisor.
5. The principal or designate should review the attached sheet entitled "Issues which may arise during Consultations" before assuming the role of advisor to the student.

**NOTE:** The foregoing instructions apply where the student is a "suspect." A student who has witnessed an accident, crime or incident in which he is not involved may be asked for his recollection by the police, in which case a sensible application of Steps 1 and 2 is appropriate.

**STUDENTS 18 AND OVER**

Students 18 and over are entitled to the same protections as other students under the *Education Act*, 1982. The Board recognizes that students who have reached the age of majority may choose to deal with police occurrences without the involvement of parents or guardians or principal. In the spirit of the *Young Offenders Act* and the *Education Act*, both police and school should move towards involving parents wherever possible.

The Adjustment Services Department is the official liaison between our schools and the various community resources, such as the Youth Branch and Criminal Divisions of the Hamilton-Wentworth Regional Police Department, and is prepared to serve in a consultation capacity.

**ISSUES WHICH MAY ARISE DURING CONSULTATION**

**1. Should the student retain a lawyer? Yes.** The only exception would be in the event of a categorical and bona fide explanation or alibi by the student, and then only after making sure that the student does not wish to consult a lawyer.

**2. Which lawyer?** Should the principal offer suggestions? The principal may wish to recommend:

(a) a lawyer of the student's choice
(b) the student's family lawyer
(c) calling the Lawyer Referral Service of the Law Society of Upper Canada (1-800-268-8326)

Attached is a copy of the *Young Offenders Act*, describing the right to counsel. This right is also referred to in Section 56.

The duty to notify parents is included in the *Young Offenders Act*, Section 9 and in Section 56. Under the *Young Offenders Act*, the duty to notify parents has become a responsibility of the investigating officer. The principal is advised to also make efforts to notify the parents and to consult with the parents as to the most effective methods of providing the student with guidance and protection from any irregular influence on the student's rights.

**3. Should the student be advised to give a statement?**

Statements given to police officers during the investigation of a crime are only likely to be used as evidence against the person accused; accordingly counsel experienced in matters of criminal law and who represent accused persons generally recommend that accused persons **do not give statements** to the investigating officers, and principals are recommended to give the same advice.

**An exception** to that rule is in the case of an alibi. The law suggests that an accused person ought to offer an alibi at the first available opportunity. The principal may still prefer to have a lawyer consulted. However, in circumstances where the student appears to have a clear and bona fide explanation or alibi, then the principal may advise the young person that he present that alibi to the investigating officer. The principal should remain present and should generally counsel the accused person against thereafter submitting to questioning until he is accompanied by counsel.

**4. Could the principal or other consulting staff member be required to give evidence in Court as to particulars of the student's consultation, or is that consultation considered to be privileged and inadmissible as evidence?** The *Young Offenders Act* does not appear to address that issue directly. Conversations an accused has with persons other than his lawyer are generally regarded as admissible, but we consider it more likely that, because of the statutory comfort given to the consultation between the young person and the adult, the Court would be bound to regard those consultations as privileged and inadmissible.

## SCHOOL BOARDS RESPONDING TO THE YOUNG OFFENDERS ACT QUESTIONNAIRE

**Northwest Territories**
Yellowknife, Yellowknife Education District No. 1

**Newfoundland and Labrador**
Labrador City, Labrador West Integrated School Board
Port Aux Basques, Port Aux Basques Integrated School Board
Stephenville, Port au Port Roman Catholic School Board

**Prince Edward Island**
Elmsdale, Regional Administrative School Unit No. 1
Montague, Regional Administrative School Unit No. 4
Summerside, Regional Administrative School Unit No. 2

**Nova Scotia**
Dartmouth, Dartmouth District School Board
Halifax, Halifax District School Board

**New Brunswick**
Dalhousie, School District No. 36
Fredericton, School District No. 26
Moncton, School District No. 15
Sackville, School District No. 14
Saint John, School District No. 20
Saint-Quentin, District scolaire No.1
Woodstock, School Districts Nos. 28-29

**Québec**
Montréal, La Commission scolaire Baldwin-Cartier
Montréal, La Commission scolaire Lakeshore
Montréal, Protestant School Board of Greater Montreal
Québec, Commission des écoles catholiques de Québec
Ville Saint-Georges, Commission scolaire régionale de la Chaudière

**Ontario**
Belleville, Hastings-Prince Edward County Roman Catholic Separate School Board
Brockville, Leeds & Grenville County Board of Education
Cornwall, Stormont, Dundas & Glengarry County Board of Education
Dryden, Dryden Board of Education
Etobicoke, Etobicoke Board of Education
Hamilton, Hamilton Board of Education
London, London Board of Education
Mississauga, Peel Board of Education
North York, North York Board of Education
Ottawa, Ottawa Board of Education
Pembroke, Renfrew County Roman Catholic Separate School Board
Sarnia, Lambton County Board of Education
Scarborough, Scarborough Board of Education
Thunder Bay, Lakehead Board of Education
Toronto, East York Board of Education
Willowdale, Metropolitan Separate School Board

**Manitoba**
Brandon School Division No. 40
Winkler, Garden Valley School Division No. 26
Winnipeg, Winnipeg School Division No. 1
Winnipeg, St. James-Assiniboia School Division No. 2
Winnipeg, St. Vital School Division No. 6
Winnipeg, Seven Oaks School Division No. 10

**Saskatchewan**
Moose Jaw School Division No. 1
Regina, Regina School Division No. 4
Saskatoon, Saskatoon School Division No. 13
Saskatoon, Saskatoon Roman Catholic Separate School Division No. 20
Warman, Saskatchewan Valley School Division No. 49

**Alberta**
Athabasca, County of Athabasca No. 12
Bonnyville, Lakeland Public School District No. 5460
Brooks, County of Newell No. 4
Calgary, Calgary Board of Education
Calgary, Calgary Roman Catholic Separate School District No.1
Edmonton, Edmonton Public School Board
Fort McMurray, Fort McMurray Catholic Board of Education, School Division No. 32
Jasper, Jasper School District No. 3063
Lethbridge, Lethbridge School District No. 51
Lethbridge, Lethbridge Catholic Separate School District No.9
Medicine Hat, Medicine Hat School District No. 76
Peace River, Peace River School Division No. 10
Red Deer, Red Deer Public School District No. 104
St. Albert, St. Albert School District No. 3

**British Columbia**
Abbotsford, Abbotsford School District No. 34
Burnaby, Burnaby School District No. 41
Coquitlam, Coquitlam School District No. 43
Delta, Delta School District No. 37
North Vancouver, North Vancouver School District No. 44
Powell River, Powell River School District No. 47
Squamish, Howe Sound School District No. 48
Surrey, Surrey School District No. 36
West Vancouver, West Vancouver School District No. 45

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